The following memorandum records what occurred at the meeting at the Federal Trade Commission on Friday, October 11, 1968. Present at this meeting were the following representatives of the Commission:

Chairman Dixon
Mr. Wheelock
Mr. Dufresne
Mr. Teney
Mr. Pillsbury
Mr. Irish
Mr. Farquar
Mr. Hale

Also present were:

Senator Clements
Mr. Resnick
Dr. Steele
Mr. Topol

Chairman Dixon opened the meeting by stating that he did not propose to become involved in a prolonged discussion. He has been talking with other members of the Commission, and it has been determined that the industry is entitled to the data requested and this data will be produced. If there is an error in the Commission test results, the Commission would like to know about this error as promptly as possible. It favors an exchange of all testing information in order to avoid the possibility of error.

Senator Clements agreed with Chairman Dixon on the need to eliminate any possible error in Commission testing results.

Chairman Dixon stated that if both laboratories began their testing at the same point, which could be determined by comparing monitor results, then both laboratories should end up with the same results.

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Senator Clements stated that Frank Resnik had previously informed representatives of the Commission about the importance of comparing monitor testing results from time to time in order to demonstrate that the two laboratories are in calibration.

Chairman Dixon stated that with all the computations which were taking place, "somebody could easily push the wrong lever."

Senator Clements noted that on the results for the second series of tests, the two laboratories had different results. TITL's results are not regarded as sacrosanct, but checking TITL results on this second run with still a third laboratory has led to the conclusion that the Commission's results and not TITL's results were incorrect on this second run.

Chairman Dixon repeated that the Commission wants an open and free exchange of all laboratory data. Scientists always want to be correct as possible in the results they report. The Commission is not "fussing" about this matter of disclosing its testing data, and it hopes that production of such data will generate acurate results.

Mr. Hale stated that he was "frightened" by the graph which demonstrated the differences between the two laboratories on market sample No. 2.

Chairman Dixon stated that it did not help anyone to get involved in a hassle about test results. From industry's basis, Dixon recognizes that the Commission is releasing testing results which are merely conclusion, and the industry needs the Commission's underlying data. In essence, the industry is telling the Commission that the Commission "had better be right."

Senator Clements explained that the industry wanted to check to determine whether the Commission was in fact right.

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Chairman Dixon asked whether those present had read this morning's Washington Post article which stated that lung cancer could be cured in five years. The Chairman asked whether this chemical could be added to cigarettes.

Senator Clements stated that the NIH is spending less on lung cancer research than it did in earlier periods because Horn and others have accepted the premise that the case has been proven.

Chairman Dixon recalled that in earlier work, the Congress had given NIH more money than it could spend. Chairman Dixon also reported that a Senator had contacted the Commission suggesting that the Commission test the effectiveness of a new filter purportedly invented by an individual whose experimental work was crude at best.

Senator Clements indicated that any cigarette manufacturer will test any new filter device if the product is patented or if there is a patent application pending, in which case both the inventor and the company would be legally protected. Senator Clements also noted that a Congressman had informed him about the Chemosol development, and this led to all nine cigarette manufacturers agreeing to have the Chemosol product tested and evaluated by an independent research laboratory. The companies could not accept the data generated in Chemosol's laboratory because of inadequacies in testing; but Chemosol was invited to inspect testing which would be done by independent laboratories, and this testing would be done at the expense of the industry. The proponents of Chemosol have now waited more than a year to respond to the industry's proposal.

Chairman Dixon recognized that all new materials claimed to be satisfactory filters must be properly tested and evaluated.

Senator Clements reported that none of the companies had ever been permitted to test the Strickman filter.

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Mr. Hale asked why Columbia University had become involved in Strickman.

Chairman Dixon stated that monetary considerations were involved.

Mr. Dixon and Mr. Wheelock left the meeting at this point.

Senator Clements stated that no one knows who owns all the Strickman filter stock. Two days prior to the Strickman announcement, there was a major stock market shift in tobacco stocks, and it would be interesting to see who had purchased tobacco stocks in this period. Sales in Canada on the Strickman filter cigarettes are currently running at a low rate. No one in the industry had ever discounted anyone's claimed innovation in the cigarette area without proper testing by an independent laboratory.

Mr. Hale stated that the Chairman had previously noted that there was no problem from the Commission's point of view in furnishing all testing data to the industry.

Senator Clements stated that Dr. Steele and Mr. Pillsbury worked very well together; and it was agreeable that Dr. Steele and Mr. Pillsbury talk freely and check monitor results.

Mr. Hale stated that this would settle the entire matter because Dr. Steele could look at the Commission's data and Mr. Pillsbury could look at TITL's data.

Senator Clements reiterated that it would then be okay for both Dr. Steele and Mr. Pillsbury to compare monitor results.

Mr. Hale asked whether the cause had been determined for the discrepancy in the test results in market sample No. 2.

Mr. Resnik stated that TITL had not seen Mr. Pillsbury's data, and that until this data was produced, the cause of discrepancy in the two laboratories' test results could not be determined.

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Mr. Topol stated that comparison of monitor results during the testing would have avoided this discrepancy.

Mr. Teney asked whether the discussion was focused entirely on Item No. 6 in Senator Clements' letter, i.e., the request for monitor data, or whether an exchange of all data was contemplated.

Senator Clements stated that thus far the discussion had been focused on monitor data and the exchange of monitor information. On other matters, Senator Clements stated that he would need approval from the companies involved. He could see no reason why Dr. Steele and Mr. Pillsbury could not meet, discuss any matters freely, and exchange any information on a reciprocal basis.

Mr. Hale reported that the Commission was close to the completion of its third round of testing. Although Mr. Hale had not previously discussed this possibility with any other Commission representative, he now suggested that the Commission compare its results on market sample No. 3 with TITL's results prior to the release of the Commission results to the public.

Senator Clements reported that on the first round of testing, he had informally communicated TITL's test results to the Commission staff in a telephone conversation.

Mr. Hale noted that it would be to everyone's benefit to have Commission test results checked prior to release.

Mr. Dufresne asked Mr. Pillsbury if there was any reason that Commission results could not be compared with TITL results prior to the release of the former.

Mr. Pillsbury indicated that there was no reason precluding such review, except previously articulated Commission policy.

Senator Clements asked whether the Commission then agreed that Commission test results would be compared with TITL results before the release of the former.

No one disagreed.

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Senator Clements repeated the industry's prior suggestions for recommendations in testing methodology. Some people in the industry thought that there should be a more stringent position on testing and that per puff data is important. The top people in all companies, including Dr. Spears of Lorillard, think that 100 is an inadequate sample size. TITL has data on tests conducted employing a 200 cigarette sample size which could be advantageously discussed by Dr. Steele and Mr. Pillsbury. TITL personnel would be happy to meet with Commission representatives and to discuss TITL data on 200 cigarettes to demonstrate how this data supports the industry's recommendation. Data compiled by individual companies also supports the recommended 200 cigarettes. The other basic difference in methodology is the 30 millimeter butt length, and Senator Clements hoped that this butt length would ultimately prevail. The Commission is urged to reconsider these two factors--sample size and butt length. Adoption of these recommendations would make the Commission test results more influential.

Mr. Hale stated that the Commission, having now concluded some testing, is more informed on the issue of methodology.

Senator Clements stated that officials in the industry were convinced of the soundness of the industry-recommended sample size and butt length.

Mr. Hale asked if the choice of a sample size of 200 led to a difference in the result which is achieved when a sample of 100 is employed.

Dr. Steele explained that based on TITL data, there was a difference in the 95% confidence intervals associated with the test result means. In the case of 200 cigarettes, these confidence intervals were significantly narrower.

Mr. Topol explained that employing a 200 cigarette sample size would make results more certain. Thus, for example, one could be more certain that a variety reported as 21 mg. was in fact 21 mg. and not 20 mg. or 22 mg.

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Mr. Resnik explained it was important from a competitive standpoint whether a variety was listed as having 21 mg. rather than 20 mg. or 22 mg. because this would substantially change the ranking of that variety in the Commission chart.

Senator Clements noted that filter cigarettes now compose the greatest portion of the cigarette market.

Mr. Teney asked whether it might not be possible to reconsider the Commission proposal that the Commission test 100 cigarettes, TITL test 100 cigarettes, and the two sets of results be combined.

Senator Clements stated that he had responded to the Commission's offer with regard to combined data; but that the Commission had failed to respond to his letter thereby ending the discussion. Senator Clements also stated that perhaps the Commission had terminated this discussion because of the suggestion that all test results would have to be within plus or minus 0.5 to be combined.

Mr. Teney stated that the Commission's failure to respond to Senator Clements' letter was not due to the 0.5 factor, but was rather due to the industry's failure to accept the condition included in the Commission's offer to combine test results.

Mr. Topol clarified that the condition referred to by Mr. Teney was paragraph 1, page 2, of Chairman Dixon's letter of May 17, 1966, which reads as follows:

> "Any suggested program involving cooperation between the two laboratories to attempt to produce yet more precise results would include an understanding that industry would not advertise any tar and nicotine yield figures nor make any collateral tar and nicotine content representations based on such figures, unless such figures are those published as a result of the joint testing program."

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Mr. Topol also read the response to this condition contained in Senator Clements' letter of June 3, 1968, which reads as follows:

> "The Commission, however, is undoubtedly aware that any cigarette company that desires lawfully to advertise 'tar' and nicotine figures for particular brands may sample more frequently than the six-month period proposed; a company may change the formulation of a particular variety or introduce a new variety on the national market within that period; it may employ different testing procedures or different sampling procedures of recognized statistical validity; or it may utilize the industry recommended butt length as properly embraced in that variety of cigarette. The Commission, of course, can institute regulatory action by complaint if it can establish that any 'tar' and nicotine level representation in any advertistement is false and misleading.
>
> "For these reasons, and also because the suggestion in itself appears to be unrelated to the proposed cooperative testing program, I cannot agree to, nor am I authorized to enter into, any understanding that no cigarette company will advertise 'tar' or nicotine levels except those derived as a result of the joint testing program."

Mr. Hale asked whether discussions for combined test results should not be reopened, beginning with the condition imposed by the Commission.

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Senator Clements stated that these discussions were terminated when the Commission did not reply to his letter.

Mr. Hale asked whether future discrepancies between TITL and the Commission test results could not be eliminated.

Mr. Resnik stated that the two laboratories should be capable of being calibrated.

Mr. Teney stated that the Commission would like to examine TITL's data, particularly if critiques were filed with the Commission referring to that data. Mr. Teney also stated that a general agreement had been made at this meeting to compare monitor data and to check results in a random way; but he wanted to formalize this agreement. Mr. Teney was troubled about the Commission's release of its data to TITL representatives prior to publication in connection with market sample No. 3.

Mr. Hale understood that the Chairman had authorized such disclosure. He could not recall any area in which the Commissioners were more interested in the activities of staff personnel.

Senator Clements stated that the great majority of smokers do not smoke to 30 millimeter length buttor shorter, and that smokers of longer cigarettes smoke to a longer butt length than smokers of shorter cigarettes. With regard to the 200 cigarette sample size, TITL representatives would be happy to meet with FTC representatives.

Mr. Irish stated that he would encourage such a meeting.

Senator Clements stated that he hoped such a meeting could be arranged.

Mr. Hale asked whether the industry had tested 200 cigarettes of each variety in a sample test.

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Dr. Steele stated that TITL had tested a 200 cigarette sample from market sample No. 1 to 30 millimeter butt length.

Mr. Irish stated that he would favor Commission-TITL discussions of the 200 cigarette sample size. The issue of 23 millimeter versus 30 millimeter could not be decided by Commission staff.

Mr. Hale stated that the Commissioners had made the decision on butt length.

Mr. Dufresne asked why the industry wanted to see Commission results on samples No. 1 and No. 2 since these were "over the hill."

Mr. Resnik explained that these would illuminate the Commission methodology, and precisely what the Commission had done in its testing.

Mr. Hale suggested that Dr. Steele and Mr. Pillsbury meet to compare test results on sample No. 3.

Senator Clements stated that TITL would exchange all of its information with the Commission on a reciprocal basis.

Mr. Topol stated that apart from review of Commission test results on sample No. 3, the industry wanted to receive from the Commission all material described in paragraphs 1 through 10 of Senator Clements' letter of August 19, 1968, in order to verify the first two sets of Commission test results which had been disclosed to the public.

All Commission personnel present agreed that the Commission would produce all information described in paragraphs 1 through 10 of Senator Clements' letter of August 19, 1968. All Commission personnel also agreed that Dr. Steele and Mr. Pillsbury would compare results on sample No. 3 prior to the release of these results to the public.

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Mr. Hale verified this latter decision by leaving the meeting, apparently contacting Chairman Dixon, and returning to the meeting to state that Dr. Steele and Mr. Pillsbury could compare results on market sample No. 3 before release to the public.

It was agreed that both the production of materials related to the first two market samples and the comparison of results on the third sample would take place in informal meetings between Dr. Steele and Mr. Pillsbury. The first such meeting was scheduled for Wednesday, October 23, at the Federal Trade Commission.

Mr. Dufresne stated that this future meeting should not involve all those present at today's meeting, but rather Dr. Steele and Mr. Pillsbury.

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